



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 26, 1998

Mr. Dean J. Johnson
Police Legal Advisor
Beaumont Police Department
P.O. Box 3827
Beaumont, Texas 77704-3827

OR98-1301

Dear Mr. Johnson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 115252.

The Beaumont Police Department (the "department") received a request for photographs and copies of a 911 tape related to a specific motor vehicle accident. On behalf of the Jefferson County District Attorney (the "district attorney"), you contend that the requested records are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

You did not raise section 552.108 within ten business days of receiving the request for the photographs and taped 911 call. *See* Gov't Code § 552.301. Ordinarily, this failure would result in the presumption that the requested records are public. *See* Gov't Code § 552.302. However, in Open Records Decision No. 586 (1991), we concluded that the need of a governmental body, other than the one that has failed to timely comply with the requirements for requesting an attorney general decision under the Open Records Act, to withhold information from disclosure may be a compelling reason to overcome the presumption that the information is public. Therefore, we will consider the section 552.108 argument that you make on behalf of the district attorney.

Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime." The district attorney has asked that you withhold the requested records because they relate to a pending criminal prosecution. Based upon this representation, we conclude that the release of the records would interfere with the detection,

investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, the department may withhold the records from disclosure under section 552.108(a)(1).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/glg

Ref.: ID# 115252

Enclosures: Submitted documents

cc: Mr. Jay J. Murray
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